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Comments of BellSouth Corporation  
Docket No. 99-81  
June 24, 1999  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
The Establishment of Policies )  
And Service Rules for the Mobile )  
Satellite Service in the 2 GHz Band )

IB Docket No. 99-81

To: The Commission

COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation, on behalf of itself and its affiliates ("BellSouth"), by its attorneys, respectfully submits the following limited comments that challenge the Commission's tentative conclusions to eliminate mutual exclusivity among those entities seeking license assignments and, thereby, negate the use of competitive bidding as the assignment methodology, and to relieve applicants of the need to demonstrate their financial qualifications. BellSouth also supports the imposition of the enhanced 9-1-1 obligations on 2 GHz Mobile Satellite Service ("MSS") providers. These comments are filed in response to the request by the Commission in the Notice of Proposed Rulemaking (FCC 99-50) released in the above captioned proceeding on March 25, 1999, 64 FR 16880 (Apr. 18, 1999) ("NPRM").

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Lia \_\_\_\_\_

**BELLSOUTH WANTS TO INSURE THAT 2 GHZ MSS LICENSEES  
CAN COMPENSATE INCUMBENT LICENSEES REQUIRED TO BE  
RELOCATED**

BellSouth's interest in this proceeding does not come from a desire to be a 2 GHz MSS licensee. Rather, it emanates from the fact that, at present, BellSouth, through various entities, holds interests in one hundred forty-eight (148) point-to-point microwave radio stations licensed in the 2165-2200 MHz frequency band. The Commission has decided to allocate that frequency block to MSS.<sup>1</sup> Rules have been adopted that govern the relocation of the Fixed Service ("FS") licensees from this band and provide for reimbursement of their relocation costs by the MSS licensees.<sup>2</sup> BellSouth's primary concern herein is to insure that, if 2 GHz MSS licenses are issued, it will be compensated for the relocation of its microwave facilities.

**THE COMMISSION SHOULD USE COMPETITIVE BIDDING AS THE  
ASSIGNMENT MECHANISM FOR THE 2 GHZ MSS LICENSES**

The *NPRM's* effort to avoid mutual exclusivity among the nine parties interested in obtaining 2 GHz MSS spectrum disregards the realities of the current MSS marketplace. One of the applicants for a 2 GHz MSS authorization is Iridium, LLC.<sup>3</sup> These comments focus on Iridium simply because it currently is the only operational MSS provider. Its public investment

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<sup>1</sup> See *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, First Report and Order and Further Notice of Proposed Rule Making, ET Docket No. 95-18, 12 F.C.C.R. 7388, 7394-95 (1997) ("First R&O"), aff'd Memorandum Opinion and Order and Third Notice of Proposed Rule Making and Order, 13 F.C.C.R. 23949, 23954 (1998) ("MO&O")*.

<sup>2</sup> See 47 C.F.R. §§ 101.69-101.83.

<sup>3</sup> See Application File No. 187-SAT-P/LA-97(96).

vehicle, Iridium World Communications, Ltd., already has a constellation of sixty-six (66) satellites in orbit covering the globe. The U.S. part of this "Big LEO" system was authorized as a result of the Commission's adoption of licensing rules for those voice and data systems in 1994.<sup>4</sup>

On April 21, 1998, one headline read "Iridium: Satellite Promise Puts Stock in Orbit."<sup>5</sup> Only last week, one of Iridium's major backers announced that next month it will decide whether or not to invest more money in the venture.<sup>6</sup> Yet, for whatever reason(s), it is experiencing financial difficulties.<sup>7</sup> Thus, to date, the only fruit from the Commission's decisions in the Big LEO proceeding to avoid mutual exclusivity and a spectrum auction is a financially troubled MSS provider.

This recent experience suggests that the Commission should take action to insure that the reallocated spectrum is going to be assigned to entities that will have the financial wherewithal to

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<sup>4</sup> See *Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band*, CC Docket No. 92-166, *Report and Order*, 9 F.C.C.R. 5936 (1994) ("Big LEO R&O") *modified in part*, *Memorandum Opinion and Order*, 11 F.C.C.R. 12861 (1996); and *Motorola Satellite Communications, Inc.*, 10 F.C.C.R. 2268 (1995).

<sup>5</sup> See <<[http://fnews.yahoo.com/oli/98/04/21/stock\\_980421.html](http://fnews.yahoo.com/oli/98/04/21/stock_980421.html)>>.

<sup>6</sup> See <<<http://biz.yahoo.com/rf/990615/bcp.html>>>.

<sup>7</sup> See <<<http://www.tr.com/online/trd/1999/td062199/Td062199-02.htm>>> ("To correct [startup] mistakes and save the multibillion-dollar project from bankruptcy, [Iridium's new CEO] Richardson announced service and equipment price cuts and said Iridium will refocus its marketing plan on industrial and government contractors who require satellite-based communications"); "Iridium to Cut Prices, Alter Marketing Strategy," *Wall Street Journal*, June 22, 1999, at B9 ("While the lower prices may attract more users, Iridium still faces other difficulties, some stemming from its poor debut").

make the Commission's stated goals in this proceeding a reality.<sup>8</sup> Otherwise, the spectrum might be assigned soon yet not utilized, if at all, for years to come.

One way to facilitate the accomplishment of the Commission's goals in today's marketplace would be to assign the licenses through the competitive bidding process. An auction would give the Commission an indication of which applicants are serious about delivering MSS. Presumably, the entities that are most interested in delivering MSS would bid the most for the licenses at the auction. Also, the market, in terms of supplying capital for bidding, would weigh in as to the viability of the various mobile satellite proposals.

The Commission's existing policy of trying to avoid mutual exclusivity among prospective satellite providers should be revisited. One of the various band plans proposed in the *NPRM* could form the basis for such an auction. The applicants can inform the Commission which of its plans or an alternative one would generate the most bidding interest. Such an approach has worked in other assignments of emerging technologies spectrum, such as various broadband and narrowband PCS auctions.

Contrary to the suggestion in the *NPRM*, *supra*, at ¶ 6, section 309(j)(6)(E) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(6)(E), does not dictate that the Commission must avoid mutual exclusivity. Indeed, in *DIRECTV, Inc. v. FCC*, 110 F.3d 816 (D.C. Cir. 1997), the Court stated:

Nothing in § 309(j)(6)(E) requires the FCC to adhere to a policy it deems outmoded "in order to avoid mutual exclusivity in . . . licensing proceedings"; rather, that provision instructs the agency, in order to avoid mutual exclusivity, to take certain steps, such as the use of an engineering solution, within the framework of existing policies.

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<sup>8</sup> See *NPRM*, *supra*, at ¶ 1.

110 F.3d at 828. Thus, if the Commission deems it appropriate, it can adjust its assignment policy for satellite services and utilize competitive bidding. The uncertainty concerning the financial viability of today's sole operational MSS provider should give the Commission pause to assess whether its considerable efforts at attempting to avoid mutual exclusivity are warranted.

One other reason given for the Commission's "assiduous efforts to avoid mutually exclusivity"<sup>9</sup> is international concerns. The specter of "coordinated multinational auctions" was raised and the supposed difficulties attendant to such an undertaking--substantial delay in service to U.S. consumers.<sup>10</sup> However, these very same concerns were considered and rejected by the Commission in the Big LEO proceeding.<sup>11</sup> Indeed, the Commission did not "believe the prospect that auctions will be conducted only in the United States would disadvantage U.S. licensees globally."<sup>12</sup> The *NPRM* does not address what has changed since 1994 that justifies a different conclusion about seemingly identical international concerns. Thus, competitive bidding still appears to be a viable assignment mechanism for MSS licenses.

**2 GHZ MSS LICENSEES SHOULD BE REQUIRED TO DEMONSTRATE  
FINANCIAL QUALIFICATIONS INCLUDING ABILITY TO  
COMPENSATE INCUMBENTS FOR RELOCATION COSTS**

If the Commission decides to forego assigning the MSS licenses by competitive bidding, the Commission should require MSS entities to demonstrate their financial qualifications. As

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<sup>9</sup> *NPRM, supra*, at ¶ 9.

<sup>10</sup> *See NPRM, supra*, at ¶ 10.

<sup>11</sup> *See Big LEO R&O, supra*, at 5971 ("We doubt, first, that our choice of licensing method will determine foreign licensing practices as much as the commenters predict").

<sup>12</sup> *Id.*

noted above, the lone operational MSS provider has experienced some financial setbacks.

Furthermore, various MSS proponents have argued repeatedly that they should not have the obligation of reimbursing Broadcast Auxiliary Service ("BAS") and FS licensees for their cost of relocating out of the 2 GHz MSS spectrum.<sup>13</sup> The MSS Coalition in a filing made after the *First R&O* suggested that the "substantial relocation expenses" would be "a significant barrier to entry."<sup>14</sup> Furthermore, on January 19, 1999, ICO Services Limited in its "Petition for Further Limited Reconsideration" in ET Docket No. 95-18, was continuing to try to overturn the Commission's application of its emerging technologies relocation policies to the 2 GHz MSS allocation.

All of the foregoing suggests that at least some of the domestic and international entities expressing interest in MSS assignments may not have the wherewithal to meet their relocation obligations. This notion can be expelled by requiring the submission of a financial qualifications showing that demonstrates that each entity can construct, launch and operate its system for one year and can meet those relocation obligations that will have been incurred by the end of that first year of operation.

MSS licensees in the 2 GHz band will incur significant relocation expenses. In 1997 dollars, the cost of relocating BAS alone was estimated variously by MSS proponents to be between \$39 million and \$275 million.<sup>15</sup> Moreover, in BellSouth's estimation, based on its

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<sup>13</sup> See *First R&O*, *supra*, at 7398, 7400 ("PCSAT contends that relocation costs would cripple the nascent MSS industry"), 7405; and *MO&O*, *supra*, at 23952, 23954 ("The MSS Coalition argues that, for various reasons, these MSS licensees should not be required to bear any relocation costs"), 23955-962.

<sup>14</sup> Reply of the MSS Coalition, filed July 2, 1997, in ET Docket No. 95-18, at 2.

<sup>15</sup> See *First R&O*, *supra*, at 7398.

experience with the displacement of incumbent FS licensees from the broadband PCS spectrum, a substantial part of the relocation will have to occur before the end of the first year of operation.<sup>16</sup> Thus, the overall relocation costs the 2 GHz MSS licensees will bear through their first year of operation are significant enough that the costs should be accounted for in the financial showings the licensees should be required to make. Given that the Commission properly imposed the obligations, it should be expected that the Commission would insure that the 2 GHz MSS licensees are able to meet those obligations.

The *NPRM* attempts to justify the decision not to review the financial qualifications of the 2 GHz MSS entities prior to licensing because "the 2 GHz MSS allocation can accommodate reasonably all nine of the proposed systems, if modified, without mutual interference."<sup>17</sup> The Commission seems confident that at least one of the *NPRM*'s three band sharing options will avoid mutual exclusivity. However, the band sharing options face a daunting task. They must meet the needs of nine aspirants, many of whom have requested "use of the entire available 2 GHz MSS spectrum allocation."<sup>18</sup> Imposition of a financial qualifications demonstration now quite possibly would winnow the field of applicants. Such a result would aid the Commission in designing a band sharing plan that could accommodate all those desiring spectrum who are capable of taking the next steps--clearing the needed spectrum and constructing, launching and operating an MSS system.

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<sup>16</sup> Compounding the relocation issue is the fact that there are approximately 13,400 FS links compressed into the 2 GHz spectrum being reallocated to MSS. By contrast, there were about 4,500 FS links spread across the 120 MHz of broadband PCS spectrum.

<sup>17</sup> See *NPRM*, *supra*, at ¶ 24.

<sup>18</sup> See *NPRM*, *supra*, at ¶ 8 (footnote omitted).

Should the Commission decline to impose a financial qualifications showing at this time, BellSouth asks that the Commission not preclude the possibility of re-instituting such a requirement once a final band plan is adopted and an assignment mechanism is chosen. The costs of clearing BAS and FS incumbents from the 2 GHz MSS band will be significant.

**ENHANCED 9-1-1 CAPABILITIES SHOULD BE REQUIRED OF MSS LICENSEES**

According to the *NPRM*, the services anticipated from MSS providers authorized as a result of this proceeding will "complement wireless service offerings through expanded geographic coverage" and "promote development of regional and global communications to rural and unserved communities in the United States, including Alaska, Hawaii, Native American areas, Puerto Rico, and U.S. territories and possessions, as well as the rest of the world."<sup>19</sup> An ancillary benefit of these services should be the facilitation of emergency services to persons located in these previously unserved or underserved areas. This benefit can be achieved if the Commission requires the members of the MSS industry to design and construct their systems to offer enhanced 9-1-1 services.<sup>20</sup> In fact, it probably will be easier for the MSS providers to design the functionalities into their systems now rather than later, especially to the extent that components with those capabilities must be included in the spacecraft.

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<sup>19</sup> See *NPRM, supra*, at ¶ 2.

<sup>20</sup> See *NPRM, supra*, at ¶ 94.



## CONCLUSION

Based on the foregoing, BellSouth recommends that the Commission employ competitive bidding as the mechanism for assigning spectrum to those seeking a 2 GHz MSS license.

However, more importantly, BellSouth requests that each applicant be required to demonstrate its financial qualifications including its ability to meet the relocation costs it will incur under the Commission's rules through the first year of operation of its system. Finally, BellSouth encourages the Commission to impose on the eventual 2 GHz MSS licensees the obligation to provide enhanced 9-1-1 capabilities to their customers. Such an obligation will benefit those users in rural and remote locations in need of emergency services.

Respectfully submitted,

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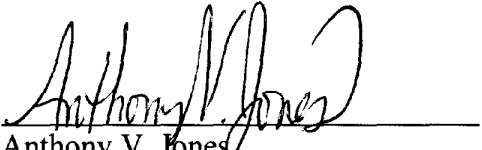
**CERTIFICATE OF SERVICE**

I hereby certify that I have this 24<sup>th</sup> day of June, 1999, served a copy of the foregoing  
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